

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

El Paso Electric Company

Docket No. ER03-221-001

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued June 5, 2003)

1. In an order issued on January 24, 2003,<sup>1</sup> the Commission rejected three unexecuted service agreements El Paso Electric Company (El Paso) submitted for Arizona Public Service Company (Arizona Public Service) and Public Service Company of New Mexico (PNM). The Commission found that El Paso did not properly implement its Open Access Transmission Tariff (OATT) with respect to separate requests for long-term firm transmission service by Arizona Electric Power Cooperative (AEPSCO) and TECO Energy Source, Inc., (TES). El Paso and PNM seek rehearing as to the Commission's rejection of two of these service agreements, involving capacity on the Palo Verde-Westwing (PV-Westwing) path. As discussed below, we grant in part and deny in part rehearing.

**Background**

2. On March 20, 2002, El Paso's OASIS indicated the availability of 187 MW of transmission capacity on the Palo Verde-Westwing path starting January 1, 2003, subject to existing customers exercising their rollover rights. Also, on March 20, 2002, AEPSCO submitted to El Paso a request for 50 MW of transmission service on the PV-Westwing path for a six-year term (January 1, 2003 - December 31, 2008). El Paso rejected AEPSCO's request because the 187 MW posted on El Paso's OASIS potentially was subject to rollover rights. Salt River Project Agricultural Improvement and Power District (Salt River) had an existing firm long-term transmission service agreement for

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<sup>1</sup>102 FERC ¶ 61,060 (2003) (January 24 Order).

124 MW under which it was required to commit to renew the service by November 1, 2002, and match the term of any competing requests. The remaining 63 MW was subject to a PNM right of first refusal.

3. On October 15, 2002, El Paso posted an additional 46 MW of Palo Verde-Westwing capacity that resulted from a new line rating. PNM requested the additional 46 MW of capacity shortly after El Paso posted the capacity on its OASIS. PNM requested the capacity for a one-year term commencing on January 1, 2003. El Paso awarded the capacity to PNM, although AEPCO claims it was first in line based on its March 20, 2002 request.

4. On October 24, 2002, TES submitted three requests for 100 MW of long-term firm transmission service on the Palo Verde-Kyrene (PV-Kyrene) path for the period June 1, 2003 through June 1, 2005. On November 1, 2002, El Paso rejected TES' requests because Salt River had a right of first refusal for the capacity. El Paso also informed TES that if Salt River did not exercise its rollover right, bidding for the capacity would commence starting one second after midnight on November 2, 2003.

5. On November 2, 2002, sixty days prior to expiration of the existing firm agreements, Salt River elected not to exercise its rollover right to 124 MW of PV-Westwing capacity.<sup>2</sup> Also, on November 2, 2002, consistent with El Paso's announcement to accept bids for this capacity after midnight, both Arizona Public Service and AEPCO submitted bids for the PV-Westwing capacity. El Paso awarded the capacity to Arizona Public Service based on the fact that Arizona Public Service submitted its bid first.

6. AEPCO and TES informed El Paso that they disputed El Paso's interpretation of the rollover and first-come, first-served provisions in its OATT. Both AEPCO and TES believed they were first-in-line for service based on their initial requests and therefore entitled to service. El Paso agreed to file unexecuted service agreements with Arizona Public Service and PNM and let the Commission resolve the dispute.

### **The Commission's January 24 Order**

7. In the January 24 Order, the Commission found that El Paso did not properly implement its OATT provisions in regard to AEPCO's and TES' capacity requests for long-term firm transmission service. The Commission explained that El Paso's rejection of AEPCO's request was not consistent with the provisions of Section 2.2 of El Paso's OATT governing competing requests for transmission service subject to rollover rights.

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<sup>2</sup>PNM exercised its rollover right for 63 MW of transmission service.

8. The Commission stated that an existing customer must be aware of any competing requests at least 60 days prior to expiration of its contract in order to make an economic decision on whether to roll over the contract. Thus, the Commission reasoned, rejecting requests for the capacity until an existing long-term customer has decided not to exercise its rollover rights makes it impossible to ever have a competing request. The Commission determined that El Paso should have treated AEPCO's and TES' applications as pending, competing requests for service up until the time Salt River was required to make a decision regarding its rollover rights.

9. The Commission concluded that when Salt River declined to roll over its existing service, Section 13.2 of El Paso's OATT required El Paso to award the capacity on a first-come, first-served basis to the potential new customers in El Paso's queue. Based on the facts presented, the Commission determined that AEPCO and TES were first in line for service and should have received the released capacity.

10. El Paso and PNM filed requests for rehearing. AEPCO filed an answer to PNM's rehearing request and on March 10, 2003, El Paso filed an answer to AEPCO's answer.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2003), generally prohibits the filing of an answer to a request for rehearing or the filing of an answer to an answer unless otherwise permitted by the decisional authority. We are not persuaded to accept the answers filed by AEPCO and El Paso, and therefore will reject them.

## **Discussion**

### **AEPCO's Request for PV-Westwing Service**

12. El Paso explains in its rehearing request that pursuant to the Commission's January 24 Order, TES would be the first-in-time applicant for 100 MW of PV-Kyrene service, but that AEPCO would not be the first-in-time for PV-Westwing service. It further explains that there were several pre-November 2, 2002 requests for PV-Westwing service, in addition to AEPCO's. Thus, El Paso seeks clarification that it is to offer the PV-Westwing service to the first-in-time applicant, including requests previously refused due to the pendency of Salt River's rollover rights, and, if such customer is no longer interested, turn to the second-in-time applicant.

### **Commission Conclusion**

13. The Commission will grant El Paso's requested rehearing in part. El Paso must offer the PV-Westwing rollover capacity to the first-in-time applicant, including requests previously refused due to the pendency of Salt River's rollover rights. However, any requests for transmission service made prior to the time El Paso posted the 187 MW of capacity on its OASIS must be considered rejected and not in the queue for the rollover capacity. We also note that the Salt River capacity became available on January 1, 2003 and that AEPCO's request for long-term firm service using that capacity was to commence on January 1, 2003. Thus, if any of the prior requests for transmission service were to commence prior to January 1, 2003, they should be considered rejected and AEPCO would be the first-in-time applicant.

#### **46 MW of Non-Rollover Capacity**

14. El Paso seeks clarification regarding PNM's October 15, 2002, request for 46 MW of PV-Westwing service. El Paso states that it is uncertain whether the previously refused PV-Westwing requests, which are to be considered in the queue for the 124 MW of released capacity, are also to be considered to be in the queue for the 46 MW of new non-rollover capacity. It reasons that but for the possibility of rollover capacity becoming available, these requests would not be in the queue at all. Thus, El Paso asserts that it does not believe that these requests should be considered to be in the queue for non-rollover capacity that becomes available while they are waiting for rollover capacity to become available.

15. PNM also seeks rehearing with respect to its request for the 46 MW of PV-Westwing service. It states that the January 24 Order does not discuss or rule on which customer has rights to service using capacity that becomes available as a result of a new rating for existing transmission equipment. It asks the Commission to clarify that its resolution of the dispute concerning competing transmission service requests does not affect PNM's priority and right to service using newly available capacity. PNM argues, as El Paso does, that but for the possibility of rollover capacity becoming available, none of the other requests would be in the queue, but would have been rejected or accepted as appropriate soon after they were made. It maintains that newly available capacity should be subject to requests that are first in time after El Paso posted the 46 MW of capacity on its OASIS.

**Commission Conclusion**

16. We will deny El Paso's and PNM's requests. An applicant in the queue for rollover capacity should also be considered eligible for any non-rollover capacity that becomes available up to and including the date the rollover capacity becomes available. The applicant is seeking service along a specified path for a specified period of time and is indifferent whether the service is rendered from rollover or non-rollover capacity. Here, PNM requested the 46 MW of capacity for a one-year period commencing on January 1, 2003, while AEPCO earlier had requested 50 MW of capacity for a six-year term (January 1, 2003 - December 31, 2008). While AEPCO and others may just fortuitously be in the queue for rollover capacity, it would defy reason to have El Paso provide the transmission capacity to PNM for a lesser amount and period of time than offered to AEPCO (or another applicant in the queue).<sup>3</sup> Thus, under the circumstances of this proceeding, we will require El Paso to offer, on a first-in-time basis, the 46 MW of non-rollover PV-Westwing capacity to the previously refused applicants for PV-Westwing capacity considered in the queue for the 124 MW of rollover capacity.

**The Commission orders:**

The requests for rehearing are hereby granted, in part, and denied, in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>3</sup>Had PNM requested the 46 MW of capacity for transmission service to commence prior to January 1, 2003, we would have considered it first in time with respect to AEPCO or any other customers in the queue for the PV-Westwing rollover capacity.